

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-999-MA of 2017 (O&M)

Date of decision: October 29, 2018

Vinod Kumar

...Applicant

Versus

Davinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Alisha Soni, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Vinod Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Davinder Singh, challenging the impugned judgment dated 20.01.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Vinod Kumar filed a complaint against accused Davinder Singh under Section 138 of the Negotiable Instruments Act read with Section 420 IPC. As per complainant's version, accused was in friendly relation with him. Accused was in need of money

and approached the complainant for financial help. On request of the

accused, complainant gave a sum of ₹2,20,000/- to the accused and in order to discharge his liability, accused issued a cheque bearing No.221595 dated 14.03.2013 for a sum of ₹2,20,000/- in favour of the complainant, which on presentation for encashment, was returned back dishonoured with the remarks 'account closed'. Legal notice was served. When the amount was not paid, then the complaint was filed within time.

The complainant examined himself as CW-1. At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his innocence. In defence, accused examined DW-1 Harbaksh Singh Manger, Handwriting and Fingerprint Expert and DW-2 Surjit Singh.

Learned JMIC, Ludhiana, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 20.01.2017.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are

learned Court below.

From the perusal of the record, I find that the complainant has not mentioned any date, month, year as to when the loan was advanced to the accused. No other particulars of any type have been mentioned in the complaint. No receipt or security document was got executed while lending such a huge amount of ₹2.20 lakhs to the accused. Otherwise also, there are no particulars, that at which place, in whose presence the loan was advanced and what was the mode of giving the amount, whether by cheque or by cash nor there is anything that the amount was withdrawn from the bank or it was lying with the complainant at his home. There is no document on record to show the loan transaction.

Further, from the record, I find that it is the case of the accused that complainant is also known by his another name as Vipin Kumar. He borrowed an amount of ₹80,000/- from the complainant in the year 2010. He regularly paid the interest on the said loan amount. At the time of lending the amount, the complainant had obtained three blank signed cheques from the accused as security. On 22.11.2011, accused paid ₹20,000/- out of ₹80,000/- and remaining amount of ₹60,000/- was agreed to be paid on monthly installments of ₹4000/- per month. At that time, the complainant executed affidavit dated 22.11.2011 duly witnessed by Surjit Singh. DW-2 Surjit Singh has supported this defence version. Further, DW-1 Harbakash Singh Mander, Handwriting and Fingerprint Expert, has proved the handwriting of complainant on the affidavit given by the complainant.

The presumption under Section 139 of the Negotiable

Instruments Act can be rebutted by raising probable defence. In the present

case, the accused has raised probable defence, which is duly supported and corroborated by the defence evidence and further from the fact that there is no document to show the loan transaction; no date, month has been mentioned as to when the loan was advanced; in whose presence and at which place the loan was given and when the loan was demanded back etc. From all this evidence, it is clear that defence raised by the accused is probable one and presumption has been duly rebutted.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 20.01.2017 passed by learned JMIC, Ludhiana, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

October 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No